

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN E. CARMONA,

Plaintiff,

-against-

V.V.S. DI VISCONTI SRL,

Defendant.
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V.V.S. DI VISCONTI SRL,

Third-Party Plaintiff,

-against-

SEVIROLI FOODS, INC.

Third-Party Defendant.
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FEUERSTEIN, J.

On October 7, 2011, plaintiff John E. Carmona ("plaintiff"), an employee of Seviroli Foods, Inc. ("Seviroli"), initiated this action against V.V.S. Di Visconti SRL ("Visconti"), the manufacturer of a meat grinder which is alleged to have caused the partial amputation of plaintiff's right index finger. [Docket Entry No.1]. On August 1, 2012, Visconti filed a third-party complaint against Seviroli seeking indemnification. [Docket Entry No. 10]. Now before the Court is Seviroli's motion for summary judgment seeking dismissal of the third-party complaint on the ground that plaintiff did not incur a "grave injury" under New York's workers' compensation law, see N.Y. WORKERS' COMP. LAW § 11. [Docket Entry No. 19].

ORDER

| 1-CV-4888 (SJF)(ETB)

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The decisions of the New York Court of Appeals addressing partial finger amputations are not dispositive here. See Castillo v. 711 Grp., Inc., 10 N.Y.3d 735, 853 N.Y.S.2d 273 (2008); Castro v. United Container Mach. Grp., Inc., 96 N.Y.2d 398, 761 N.E.2d 1014, 736 N.Y.S.2d 287 (2001). However, based upon the decisions of the Appellate Division in Blackburn v. Wysong & Miles Co., 11 A.D.3d 421, 783 N.Y.S.2d 609 (2d Dept. 2004), and McCoy v. Queens Hydraulic Co., Inc., 286 A.D.2d 425, 729 N.Y.S.2d 733 (2d Dept. 2001), the Court concludes that plaintiff did not incur a grave injury as a matter of law. Therefore, Seviroli's motion for summary judgment is granted, and the third-party complaint [Docket Entry No. 10] is dismissed.

SO ORDERED.

s/ Sandra J. Feuerstein

SANDRA J. FEUERSTEIN
United States District Judge

Dated: February 8, 2013
Central Islip, New York